

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT LAWRENCE WILLIAMS,

Plaintiff,

v.

CITY OF SAN LEANDRO, SAN
LEANDRO CHIEF OF POLICE,
OFFICER MUND, OFFICER JOHN DOE,
Defendants.

Case No.: C 13-2302 CW (PR)

ORDER GRANTING DEFENDANT MUND'S
MOTION FOR SUMMARY JUDGMENT AND
PLAINTIFF'S MOTION TO ADMIT
NEWLY OBTAINED EVIDENCE AND
DENYING PLAINTIFF'S REMAINING
MOTIONS

Doc. Nos. 15, 17, 21, 22, 24,
25 and 33.

Plaintiff Robert Lawrence Williams, an inmate at the Northern Nevada Correctional Center, filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that San Leandro police officers violated his constitutional rights. On December 5, 2013, the Court issued an Order for service of a cognizable Fourth Amendment claim against San Leandro Police Officer Ted Mund.

On March 11, 2014, Officer Mund filed a motion for summary judgment, which is fully briefed (Doc. No. 17). Plaintiff has filed the following motions: (1) to enter judgment or sanctions against Officer Mund (Doc. No. 15); (2) to amend the complaint to add the San Leandro Police Department as a defendant (Doc. No. 21); (3) to compel discovery (Doc. No. 22); (4) to compel discovery (Doc. No. 24); (5) to amend the complaint to add San Leandro Police Officer J. Robertson as a defendant (Doc. No. 25); and (6) to admit newly obtained evidence in support of Plaintiff's opposition to the summary judgment motion (Doc. No. 33).

1 Defendant has opposed all motions.¹ For the reasons discussed
2 below, the Court grants Defendant's motion for summary judgment
3 and Plaintiff's motion to admit newly obtained evidence and denies
4 all other motions Plaintiff has filed.

5 BACKGROUND

6 The following facts are from Plaintiff's verified complaint
7 and the parties' declarations and exhibits.

8 I. Defendant's Version of Events

9 The parties agree that, on February 4, 2013, Officer Mund
10 conducted a traffic stop of a vehicle driven by Plaintiff. The
11 remaining facts are in dispute.

12 Officer Mund declares as follows. He stopped Plaintiff's
13 vehicle because Plaintiff failed properly to use a turn signal in
14 violation of California Vehicle Code section 22108.² As Officer
15 Mund turned on his police vehicle's overhead emergency lights, he
16 noticed Plaintiff lean to his right toward the passenger seat,
17 furtively look in Officer Mund's direction, then shift around in
18 his driver's seat before he parked his vehicle. Based upon
19 Officer Mund's training and experience, he believed Plaintiff was
20 attempting to conceal a weapon or illegal contraband. Pursuant to
21

22 ¹ On October 30, 2014, Plaintiff filed a document entitled,
23 "newly discovered evidence," in which he discusses two cases
24 relevant to Officer Mund's search based on Plaintiff's parole
25 status. See Doc. no. 36. As discussed below, Officer Mund's
26 motion for summary adjudication that his search based on
27 Plaintiff's parole status was lawful is denied. Therefore, the
28 Court does not address Plaintiff's late submitted cases.

² Section 22108 provides, "Any signal of intention to turn
right or left shall be given continuously during the last 100 feet
traveled by the vehicle before turning."

1 his training on officer safety protocol, Officer Mund requested
2 that Plaintiff step out of his vehicle so he would not have access
3 to any potential weapons in the car. Officer Mund asked Plaintiff
4 to provide him with his driver's license and asked if he was on
5 parole or probation. Plaintiff said he was on parole.

6 Officer Mund contacted San Leandro Police dispatch to confirm
7 Plaintiff's parole status. Dispatch informed him that Plaintiff
8 was on parole. Officer Mund attaches a copy of a February 4, 2013
9 Detail Call for Service Report indicating that dispatch informed
10 him that Plaintiff was on parole. Mund Dec., Exh. A. Based upon
11 Plaintiff's parole status, Officer Mund searched Plaintiff and his
12 vehicle for weapons and contraband. The search revealed no
13 illegal items. Officer Mund returned Plaintiff's driver's license
14 to him and released him with a traffic violation warning. Officer
15 Mund attaches a copy of his police report confirming his
16 testimony. Mund Dec., Exh. B.

17 Plaintiff's parole officer, Officer Scott Grinnell, states
18 that, at the time of the traffic stop at issue, Plaintiff was on
19 parole for violations of California Penal Code section 273.5
20 (willful infliction of corporal injury on a spouse) and California
21 Penal Code section 12021 (possession of a firearm by a felon).
22 Plaintiff's parole included the condition that he was subject to
23 search or seizure by a parole officer or other peace officer at
24 any time of the day or night, with or without a search warrant and
25 with or without cause. Grinnell Dec., Exh. A, Conditions of
26 Parole, signed by Plaintiff on May 11, 2010. The third paragraph
27 of the Conditions of Parole document states, "You and your
28 residence and any other property under your control may be

1 searched without a warrant by an agent of the Department of
2 Corrections or any law enforcement officer." Id.

3 II. Plaintiff's Version of Events

4 In his verified complaint, Plaintiff states that immediately
5 after Officer Mund and his partner stopped Plaintiff's car,
6 Plaintiff asked why they had stopped him and Officer Mund replied
7 that Plaintiff was "moving in his car." When Officer Mund asked
8 if he had guns or drugs, Plaintiff replied, "No." The officers
9 took Plaintiff out of his car and searched him. Officer Mund
10 placed Plaintiff in the patrol car and searched Plaintiff's
11 vehicle. Plaintiff heard dispatch tell one of the officers that
12 Plaintiff was on probation but without a search clause. Plaintiff
13 told Officer Mund he was on parole, but Officer Mund had already
14 searched Plaintiff and his car. Officer Mund took Plaintiff's
15 identification, but did not return it.

16 In his declaration in support of his summary judgment
17 opposition, Plaintiff states the following. Plaintiff told
18 Officer Mund that he did not have a valid driver's license or
19 insurance for his vehicle, and Officer Mund immediately searched
20 Plaintiff and his vehicle without asking Plaintiff's permission.
21 Plaintiff gave Officer Mund his wallet containing his California
22 Identification card and his prison ID card, not his driver's
23 license, which had expired in September 2012. Plaintiff informed
24 Officer Mund that he was on parole after Officer Mund searched
25 Plaintiff's vehicle. At the same moment, dispatch informed
26 Officer Mund that Plaintiff was on probation with no search
27 clause. Officer Mund replied to the dispatcher that Plaintiff
28 just advised him that he was on parole. Officer Mund returned

1 Plaintiff's wallet and prison ID card to him and let him go.
2 Officer Mund did not give Plaintiff a warning.

3 In his sworn opposition, Plaintiff adds that he did not do
4 anything wrong to warrant being pulled over by Officer Mund and
5 that Officer Mund stopped him because he is a black male who was
6 driving a big Cadillac with big tires and wheels.

7 Plaintiff's newly obtained evidence shows that his driver's
8 license had expired many months before the traffic stop.

9 DISCUSSION

10 I. Motion for Summary Judgment

11 A. Legal Standard

12 Summary judgment is only proper where the pleadings,
13 discovery, and affidavits show there is "no genuine issue as to
14 any material fact and that the moving party is entitled to
15 judgment as a matter of law." Fed. R. Civ. P. 56(a). Material
16 facts are those which may affect the outcome of the case.
17 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A
18 dispute as to a material fact is genuine if the evidence is such
19 that a reasonable jury could return a verdict for the nonmoving
20 party. Id.

21 The court will grant summary judgment "against a party who
22 fails to make a showing sufficient to establish the existence of
23 an element essential to that party's case, and on which that party
24 will bear the burden of proof at trial." Celotex Corp. v.
25 Catrett, 477 U.S. 317, 322-23 (1986). The moving party bears the
26 initial burden of identifying those portions of the record that
27 demonstrate the absence of a genuine issue of material fact. The
28 burden then shifts to the non-moving party to "go beyond the

1 pleadings, and by his own affidavits, or by the 'depositions,
2 answers to interrogatories, or admissions on file,' designate
3 'specific facts showing that there is a genuine issue for trial.'" Id.
4 at 324.

5 In considering a motion for summary judgment, the court must
6 review the evidence in the light most favorable to the nonmoving
7 party. Leslie v. Grupo ICA, 198 F.3d 1152, 1158 (9th Cir. 1999).
8 The court's function on a summary judgment motion is not to make
9 credibility determinations or weigh conflicting evidence with
10 respect to a disputed material fact. T.W. Elec. Serv. v. Pacific
11 Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

12 A district court may consider only admissible evidence in
13 ruling on a motion for summary judgment. Fed. R. Civ. P.
14 56(c); Orr v. Bank of America, 285 F.3d 764, 773 (9th Cir. 2002).
15 A verified complaint may be used as an opposing affidavit under
16 Rule 56, as long as it is based on personal knowledge and sets
17 forth specific facts admissible in evidence. Schroeder v.
18 McDonald, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995).

19 B. Fourth Amendment Violation

20 The Fourth Amendment proscribes "unreasonable searches and
21 seizures." U.S. Const. amend. IV; Allen v. City of Portland, 73
22 F.3d 232, 235 (9th Cir. 1995); Franklin v. Foxworth, 31 F.3d 873,
23 875 (9th Cir. 1994). Searches conducted without a warrant from a
24 judge or magistrate are per se unreasonable under the Fourth
25 Amendment, subject to only a few specific exceptions. Arizona v.
26 Gant, 556 U.S. 332, 338 (2009). Among these are the automobile
27 and the protective search exceptions. Id. at 346.
28

1 The automobile exception is based on the "impracticality of
2 securing a warrant in cases involving the transportation of
3 contraband goods." United States v. Ross, 456 U.S. 798, 806-07
4 (1982). Where an automobile is involved, "an immediate intrusion
5 is necessary if police officers are to secure the illicit
6 substance." Id. The automobile exception applies if the officer
7 has probable cause to search, that is, under the totality of the
8 circumstances, there is a fair probability that contraband or
9 evidence of a crime will be found in the vehicle. United States
10 v. Ewing, 638 F.3d 1226, 1231 (9th Cir. 2011). Under the totality
11 of the circumstances test, otherwise innocent behavior may be
12 indicative of criminal activity. United States v. Chavez-Miranda,
13 306 F.3d 973, 978 (9th Cir. 2002). Circumstances that have been
14 considered are: the driver's or passengers' apparent nervousness,
15 profuse perspiration or furtive movements appearing to conceal
16 something; a perceived inconsistency between the driver's or
17 passengers' statements and appearances; the failure of the driver
18 or passengers to comply promptly with officers' orders; and the
19 police officers' training and experience. United States v. Law,
20 2013 WL 2458410, *5 (E.D. Cal.) (citations omitted). Inability to
21 provide proof of the automobile's registration, proof of insurance
22 or a valid driver's license gives rise to suspicion of a stolen
23 vehicle. See United States v. Garcia-Rivera, 353 F.3d 788, 791
24 (9th Cir. 2003) (holding that furtive movement and failure to
25 produce valid license, vehicle registration and proof of insurance
26 justified the officer's searching driver for weapons, performing a
27 records check and requesting consent to search the vehicle); but
28 see United States v. Parr, 843 F.2d 1228, 1229 (9th Cir. 1988)

1 (furtive movements alone not sufficient to extend scope of valid
2 traffic stop).

3 In the case of a routine traffic stop, concern for officer
4 safety justifies the minimal intrusion of ordering the driver and
5 passengers out of the car and performing a patdown of a driver and
6 passengers upon reasonable suspicion that they may be armed and
7 dangerous. Knowles v. Iowa, 525 U.S. 113, 118 (1998) (citing
8 Terry v. Ohio, 392 U.S. 1 (1968)); Pennsylvania v. Mimms, 434 U.S.
9 106, 109-11 (1977) (pursuant to legitimate traffic stop, officer
10 may order occupants to exit vehicle for officer safety).

11 The Fourth Amendment does not prohibit a police officer from
12 conducting a suspicionless search of a parolee. Samson v.
13 California, 547 U.S. 843, 851-856 (2006) (finding that
14 suspicionless search of parolee, conducted under the authority of
15 a California statute requiring that every prisoner eligible for
16 release on state parole "shall agree in writing to be subject to
17 search or seizure by a parole officer or other peace officer at
18 any time of the day or night, with or without a search warrant and
19 with or without cause," did not violate the Fourth Amendment).

20 But an officer would not act reasonably in conducting a
21 suspicionless search absent knowledge that the person stopped for
22 the search is a parolee. Id. at 856 n.5; see also Moreno v. Baca,
23 431 F.3d 633, 642 (9th Cir. 2005) (parole status must be known to
24 officer at time search is conducted).

25 C. Analysis

26 As discussed above, the allegations in Plaintiff's complaint
27 are that, after Officer Mund initiated a traffic stop of
28 Plaintiff's vehicle, he unlawfully searched Plaintiff and his
vehicle and did not return Plaintiff's identification to him. In

1 its Order of Service, the Court found that these allegations,
2 liberally construed, appeared to state a cognizable Fourth
3 Amendment claim against Officer Mund. In his opposition to the
4 summary judgment motion, Plaintiff argues that he had done nothing
5 wrong to warrant the stop and that Officer Mund initiated the
6 traffic stop based on racial profiling. Because no allegations
7 giving rise to a claim that Plaintiff had done nothing wrong and
8 was a victim of racial profiling were in the complaint, such a
9 claim was not in the Court's order of service. Thus, Officer Mund
10 did not address that claim in his motion or reply. For the same
11 reason, the Court does not address such a claim. If Plaintiff
12 wishes to pursue such a claim, he would have to attempt to assert
13 it in a separate complaint.

14 1. Unreasonable Search

15 a. Parole Search

16 Plaintiff argues that Officer Mund's search was illegal
17 because he learned that Plaintiff was on parole only after he had
18 searched Plaintiff and his vehicle.

19 Officer Mund supports his position that he knew that
20 Plaintiff was on parole at the time he searched Plaintiff and his
21 vehicle with his declaration, his police report of the incident,
22 the report from police dispatch showing that Plaintiff was on
23 parole, Officer Grinnell's declaration that Plaintiff was on
24 parole and a copy of the conditions of Plaintiff's parole.
25 Plaintiff disputes this evidence with the statements in his
26 verified complaint and in his declaration that Officer Mund
27 searched Plaintiff and his vehicle before Officer Mund received a
28 response from police dispatch about Plaintiff's parole status and
before Plaintiff told him he was on parole. He also states that

1 police dispatch told Officer Mund that Plaintiff was on
2 misdemeanor probation without a search clause.

3 The undisputed evidence shows that Officer Mund called police
4 dispatch to request Plaintiff's parole status and that police
5 dispatch replied that Plaintiff was on parole. Plaintiff cannot
6 raise a dispute of material fact by stating that dispatch replied
7 that he was only on probation without a search condition when the
8 documentary evidence shows that dispatch replied that Plaintiff
9 was currently on parole for a domestic violence offense. This is
10 further corroborated by the documentary evidence showing that
11 Plaintiff was on parole with a search condition.

12 Plaintiff also cannot raise a dispute of fact with his own
13 contradictory evidence. Plaintiff admits that he told Officer
14 Mund that he was on parole, but states that he was only on
15 probation without a search clause and argues that the documentary
16 evidence of his parole and the search condition is false. Even
17 without Plaintiff's admission that he was on parole, this fact is
18 corroborated by the dispatch report, Agent Grinnell's declaration
19 and the copy of the parole document. In the face of this
20 overwhelming evidence showing that Plaintiff was on parole,
21 Plaintiff cannot raise a dispute of fact with the statement that
22 the document is false or that the dispatcher said he was on
23 probation with no search clause.

24 However, there is a dispute of fact about when Officer Mund
25 initiated his search. Officer Mund states that first he learned
26 from Plaintiff and the dispatcher that Plaintiff was on parole and
27 then he searched Plaintiff and the vehicle. Plaintiff states that
28 Officer Mund conducted the searches before he heard from the
dispatcher and before Plaintiff told him he was on parole. On a

1 motion for summary judgment, disputes of fact must be resolved in
2 favor of the non-moving party. Therefore, the evidence, viewed in
3 the light most favorable to Plaintiff, shows that Officer Mund
4 conducted his search of Plaintiff and the vehicle before he
5 learned Plaintiff was on parole. If this were true, the search of
6 the vehicle, based on Plaintiff's parole status, would not have
7 been lawful. See Samson, 547 U.S. at 856 n.5; Moreno, 431 F.3d at
8 642 (parole status must be known to officer at time search is
9 conducted). Thus, Officer Mund's motion for summary adjudication
10 that his search was lawful because it was based on Plaintiff's
11 parole status is denied.

12 b. Automobile and Officer Safety Exceptions

13 Officer Mund also argues that he had probable cause to search
14 Plaintiff and his vehicle because, when he attempted to enforce
15 the traffic stop, he observed Plaintiff lean toward the passenger
16 seat, look furtively in Officer Mund's direction and then shift
17 around in his driver's seat before he pulled his vehicle to a
18 stop. Officer Mund declares that, based on his training and
19 background, Plaintiff's actions led him to believe that Plaintiff
20 may have been concealing a weapon or other contraband in the
21 vehicle. Pursuant to Officer's Mund's training on officer safety
22 protocol, when he approached Plaintiff's vehicle, he requested
23 that Plaintiff step out of his vehicle so that he would not have
24 direct access to any potential weapons.

25 Even if Officer Mund did not yet know that Plaintiff was on
26 parole, the totality of the circumstances — Plaintiff's furtive
27 movements and Plaintiff's failure to produce a valid driver's
28 license and car insurance — gave rise to probable cause for
Officer Mund to believe that weapons or contraband were on

1 Plaintiff's person and, on this basis, he lawfully conducted a
2 search of Plaintiff. See Garcia-Rivera, 353 F.3d at 791 (driver's
3 furtive movement and failure to produce valid driver's license,
4 vehicle registration and proof of insurance justified officer's
5 search of driver). However, these facts do not justify Officer
6 Mund's search of the vehicle.

7 The facts in Garcia-Rivera are similar to the facts in this
8 case. In Garcia-Rivera, after the officers' activated the lights
9 in the police vehicle to make a lawful traffic stop, they observed
10 Garcia-Rivera make a furtive movement, leaning forward as if
11 reaching for something or putting something down. Id. In
12 addition, Garcia-Rivera failed to produce a valid license, vehicle
13 registration or proof of insurance. Id. One of the officers
14 patted down Garcia-Rivera for weapons, performed a records check
15 and asked for consent to search the vehicle. Id. The court held
16 that, given Garcia-Rivera's furtive movement and inability to
17 provide any valid documentation, the officer's actions were
18 reasonable. Id.

19 Garcia-Rivera, therefore, supports Officer Mund's search of
20 Plaintiff's person; it does not support Officer Mund's warrantless
21 search of Plaintiff's vehicle. After Officer Mund asked Plaintiff
22 to step out of his car, searched Plaintiff and found no weapons or
23 contraband, Plaintiff was no longer a threat to officer safety;
24 under Plaintiff's version of the facts, Officer Mund did not have
25 probable cause to search the vehicle. Therefore, summary
26 adjudication that Officer Mund's search of Plaintiff's person was
27 lawful is warranted, but not of his search of Plaintiff's vehicle.

28 Plaintiff attempts to dispute Officer Mund's evidence
regarding both searches. First, Plaintiff attempts to dispute

1 that he made a "furtive movement" in his vehicle by declaring that
2 the vehicle's lap and shoulder restraints prevented much movement.
3 However, he fails to state that he did not make a "furtive
4 movement" or look "furtively" in Officer Mund's direction before
5 bringing his vehicle to a stop.

6 Plaintiff attempts to call Officer Mund's credibility into
7 question by pointing out that his police report states that he
8 returned Plaintiff's driver's license to him at the scene.
9 Plaintiff argues that this statement is false because Plaintiff's
10 driver's license had expired. However, Plaintiff himself states
11 that he gave Officer Mund his wallet containing his California
12 identification and prison ID card and that Officer Mund returned
13 these documents to him. Pl.'s Dec. at 2. This evidence merely
14 shows that Plaintiff gave Officer Mund identification other than
15 his driver's license, not that Officer Mund lied about having
16 Plaintiff's driver's license.

17 Plaintiff also argues the fact that Officer Mund could have,
18 but did not, cite him for other violations, shows that Officer
19 Mund is lying about the searches. However, the fact that Officer
20 Mund did not cite Plaintiff for not having a valid driver's
21 license or automobile insurance has no bearing on the fact that
22 Officer Mund had probable cause to search Plaintiff or on Officer
23 Mund's credibility regarding the search.

24 The totality of the evidence, taken in the light most
25 favorable to Plaintiff, fails to raise a genuine dispute of
26 material fact that Officer Mund did not have probable cause to
27 search Plaintiff's person. Accordingly, summary judgment is
28 granted in favor of Officer Mund on the Fourth Amendment claim
based on his search of Plaintiff's person. However, accepting

1 Plaintiff's version of the facts, Officer Mund did not have
2 probable cause to search Plaintiff's vehicle and summary judgment
3 is denied on this claim.

4 2. Seizure of Driver's License

5 Any claim based on the allegation in Plaintiff's complaint
6 that Officer Mund did not return Plaintiff's identification to him
7 is refuted by Plaintiff's own evidence that Officer Mund returned
8 the identification documents Plaintiff gave to him. Accordingly,
9 summary judgment is granted in favor of Officer Mund on the claim
10 based on the seizure of Plaintiff's identification.

11 D. Qualified Immunity

12 Officer Mund also argues that the doctrine of qualified
13 immunity protects him from liability. The defense of qualified
14 immunity protects "government officials . . . from liability for
15 civil damages insofar as their conduct does not violate clearly
16 established statutory or constitutional rights of which a
17 reasonable person would have known." Harlow v. Fitzgerald, 457
18 U.S. 800, 818 (1982). A court considering a claim of qualified
19 immunity must determine whether the plaintiff has alleged the
20 deprivation of an actual constitutional right and whether the
21 right was clearly established, such that it would be clear to a
22 reasonable officer that his conduct was unlawful in the situation
23 he confronted. Pearson v. Callahan, 555 U.S. 223, 236 (2009).

24 As discussed above, Officer Mund had probable cause to search
25 Plaintiff's person, but accepting Plaintiff's version of the
26 facts, he did not have probable cause to search Plaintiff's
27 vehicle. Thus, Officer Mund's search of Plaintiff did not violate
28 Plaintiff's constitutional rights but Officer Mund's search of
Plaintiff's vehicle may have violated his constitutional rights.

1 However, assuming the existence of a constitutional violation
2 based on both searches, the evidence, viewed in the light most
3 favorable to Plaintiff, shows that a reasonable officer in Officer
4 Mund's situation could have believed that he had probable cause to
5 search Plaintiff and his vehicle. The undisputed evidence is
6 that: (1) while Officer Mund was initiating a valid traffic stop,
7 he observed Plaintiff make suspicious movements in his car and
8 look furtively at him; and (2) after Officer Mund made the traffic
9 stop, he learned that Plaintiff did not have a valid driver's
10 license or car insurance. Given the Supreme Court and Ninth
11 Circuit precedent discussed above, under these circumstances, it
12 would not be clear to a reasonable officer that it was unlawful to
13 search Plaintiff's person. And, although it is a close question,
14 given the automobile and officer safety exceptions to warrantless
15 searches, it would not have been clear to a reasonable officer in
16 Officer Mund's position that it was unlawful to search Plaintiff's
17 vehicle for weapons and contraband. Therefore, Officer Mund is
18 entitled to summary judgment for both searches on the basis of
19 qualified immunity.

20 II. Plaintiff's Motions

21 A. Motion for Default Judgment

22 Plaintiff moves for a default judgment against Officer Mund
23 for not filing a timely answer. Based upon the Court's Order of
24 Service, Officer Mund's answer was timely. This motion is denied.

25 B. Motions to Amend Complaint

26 Plaintiff files two motions to amend his complaint. In his
27 first motion, Plaintiff seeks to add the San Leandro Police
28 Department as a defendant for failing to train properly Officer J.
Robertson. Officer Robertson was Officer Mund's partner at the

1 time of Plaintiff's traffic stop. In his second motion, Plaintiff
2 seeks to add Officer Robertson as a defendant.

3 1. Motion to Add San Leandro Police Department

4 A claim against a police department based on inadequacy of
5 training may serve as the basis of § 1983 liability only where the
6 failure to train amounts to deliberate indifference to the rights
7 of persons with whom the officers come into contact. Munger v.
8 City of Glasgow Police Dep't, 227 F.3d 1082, 1087 (9th Cir. 2000).
9 An allegation that a municipality failed to train a single officer
10 is insufficient to state a claim of municipal liability.

11 Blankenhorn v. City of Orange, 485 F.3d 463, 484-85 (9th Cir.
12 2007). Absent program-wide inadequacies in training, a failure to
13 train a single officer "can only be classified as negligence on
14 the part of the municipal defendant—a much lower standard of
15 fault than deliberate indifference." Id. at 485.

16 Plaintiff's allegation that the San Leandro Police Department
17 failed properly to train Officer Robertson does not state a
18 cognizable Fourth Amendment claim because a failure to train one
19 officer would show that the department was negligent, not that it
20 was deliberately indifferent to the rights of all persons with
21 whom its officers came into contact. Furthermore, the Court
22 previously informed Plaintiff of the allegations necessary to
23 state a cognizable claim against a local municipal agency under
24 Monell v. Dep't of Social Servs., 436 U.S. 658, 690 (1978), and
25 provided him twenty-eight days in which to file an amended
26 complaint. See Order of Service and Partial Dismissal with Leave
27 to Amend, Doc. no. 8 at 3-5. Plaintiff did not file an amended
28 complaint within twenty-eight days, but filed this motion for
leave to amend after Officer Mund filed his motion for summary

1 judgment. Because this is Plaintiff's second failed attempt to
2 state a claim against a municipal agency, his motion for leave to
3 amend is denied with prejudice. See Allen v. City of Beverly
4 Hills, 911 F.2d 367, 373-74 (9th Cir. 1990) (district court's
5 discretion to deny leave to amend particularly broad where
6 plaintiff previously amended complaint).

7 2. Motion to Add Officer Robertson

8 Leave to amend is futile if the proposed claims contain
9 defects that cannot be cured by any amendment. Cervantes v.
10 Countrywide Home Loans, Inc., 656 F.3d 1034, 1041 (9th Cir. 2011);
11 see also Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th
12 Cir. 1988) (proposed amendment is futile if no set of facts can be
13 proved under it that would constitute a valid claim).

14 Plaintiff cannot state a Fourth Amendment claim against
15 Officer Robertson because he would be entitled to the same legal
16 defenses and immunities set forth in Officer Mund's motion for
17 summary judgment. As discussed above, summary judgment has been
18 granted in favor of Officer Mund. Plaintiff's Fourth Amendment
19 claim against Officer Robertson would fail for the same reasons it
20 fails against Officer Mund. Thus, adding Officer Robertson as a
21 defendant would be futile.

22 Therefore, Plaintiff's two motions for leave to amend are
23 denied with prejudice.

24 C. Motions to Compel

25 Plaintiff submits two motions to compel discovery.

26 Under Rule 26 of the Federal Rules of Civil Procedure,
27 parties are entitled to discovery regarding any non-privileged
28 matter that is relevant to any party's claim or defense, including
the existence, description, nature, custody, condition, and

1 location of any documents or other tangible things and the
2 identity and location of persons who know of any discoverable
3 matter. Fed. R. Civ. P. 26(b)(1). A party may serve on any other
4 party a request for documents in the responding party's
5 possession, custody or control. Fed. R. Civ. P. 34(a). For good
6 cause, the court may order discovery of any matter relevant to the
7 subject matter involved in the action. Relevant information need
8 not be admissible at the trial if the discovery appears reasonably
9 calculated to lead to the discovery of admissible evidence. Id.

10 The court must limit access to discovery that is
11 "unreasonably cumulative or duplicative, or can be obtained from
12 some other source that is more convenient, less burdensome, or
13 less expensive," Fed. R. Civ. P. 26(b)(2)(C)(i), or where "the
14 burden or expense of the proposed discovery must be assessed in
15 light of its likely benefit, considering the needs of the
16 case, the amount in controversy, the parties' resources, the
17 importance of the issues at stake in the action, and the
18 importance of the discovery in resolving the issues," Fed. R. Civ.
19 P. 26(b)(2)(C)(iii).

20 In his first motion, Plaintiff requests the production of the
21 following three items: (1) dispatch recordings of Plaintiff's
22 vehicle stop; (2) all camera footage of the vehicle stop; and
23 (3) the San Leandro Police Department's Procedure and Policy
24 manual for a legal vehicle stop. Officer Mund responded as
25 follows: (1) no dispatch recordings of the events in dispute are
26 in his care because all dispatch recordings are disposed of or
27 deleted after one year from the date they are recorded, pursuant
28 to San Leandro Police Department policy; (2) the San Leandro
Police Department does not have vehicle-mounted dashboard cameras

1 in patrol vehicles or any other type of camera recording; and (3)
2 the San Leandro Police Department does not have a policy and
3 procedures manual for making a legal stop because all San Leandro
4 police officers are trained on how to conduct a traffic stop at
5 the police academy.

6 Because the documents and discovery that Plaintiff requested
7 were not in the control or possession of Officer Mund, he cannot
8 be compelled to provide a different response. See Fed. R. Civ. P.
9 34(a). Plaintiff's first motion to compel is denied.

10 In his second motion to compel discovery, Plaintiff argues
11 that Officer Mund should not have allowed the San Leandro Police
12 Department to destroy dispatch recordings because he had notice of
13 Plaintiff's lawsuit before one year from the date the recordings
14 were made. He argues that Officer Mund filed his motion for
15 summary judgment before a year had passed and, thus, he should
16 have included the dispatch tape as evidence or at least produced
17 it to Plaintiff.

18 Officer Mund had notice of the lawsuit approximately eleven
19 months after it was filed. The following are the relevant dates.
20 The vehicle stop occurred on February 4, 2013. Plaintiff filed
21 this lawsuit on May 21, 2013. However, he did not file a complete
22 in forma pauperis application until October 17, 2013. On December
23 5, 2013, the Court reviewed Plaintiff's complaint and issued an
24 order of service. The notice of lawsuit and request for waiver of
25 service of summons were mailed to Officer Mund on December 10,
26 2013. This waiver of summons form allows defendants a longer time
27 to respond to a complaint in exchange for waiving the official
28 service of summons requirement. Officer Mund filed his waiver of

1 service form on January 9, 2014, and he filed both his answer and
2 motion for summary judgment on March 6, 2013.

3 These dates show that, by the time Officer Mund appeared in
4 this action on January 9, 2014, almost a year had gone by since
5 the traffic stop occurred on February 4, 2013. And, contrary to
6 Plaintiff's assertion, more than a year had passed by the time
7 Officer Mund filed his answer and motion for summary judgment on
8 March 6, 2014. Therefore, although it would have been prudent for
9 Officer Mund to have gathered the dispatch recording before it was
10 destroyed on February 4, 2014, the timing was such that it cannot
11 be said that he could have done so. Furthermore, although
12 Plaintiff believes that the recording would show that police
13 dispatch said that Plaintiff was on probation without a search
14 clause, the documentary evidence shows that police dispatch
15 informed Officer Mund that Plaintiff was on parole.

16 Accordingly, Plaintiff's second motion to compel is denied.

17 D. Motion to Admit Newly Discovered Evidence

18 In this motion, Plaintiff seeks the admission of evidence
19 showing that, at the time of the traffic stop, his driver's
20 license had expired. This motion is granted. However, as
21 discussed above, the newly discovered evidence does not save
22 Plaintiff's claim.

23 CONCLUSION

24 Based on the foregoing, the Court orders as follows:

25 1. Officer Mund's motion for summary judgment is granted.
26 Doc. No. 17.

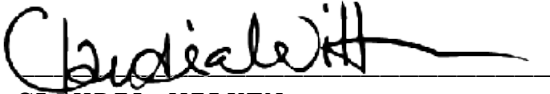
27 2. Plaintiff's motion to add newly discovered evidence is
28 granted. Doc. No. 33.

1 3. All other motions filed by Plaintiff are denied. Doc.
2 Nos. 15, 21, 22, 24 and 25.

3 4. The Clerk shall enter a separate judgment in favor of
4 Officer Mund and close the file. Each party shall bear his own
5 costs.

6 IT IS SO ORDERED.

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8 Dated: November 14, 2014

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10 CLAUDIA WILKEN
11 UNITED STATES DISTRICT JUDGE
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United States District Court
For the Northern District of California